

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
SOUTHERN DIVISION

**PLAINTIFF'S SUPPLEMENT TO ITS REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Regis Insurance Company (“Regis”) files this Supplement to the September 8, 2006, Reply in support of Regis’s Motion for Summary Judgment, stating as follows:

1. This action seeks a declaration that Regis owes neither a defense nor an indemnification to P&C Grocers, Inc., or Charles Parker (collectively, “Defendants”) for claims asserted against them in a suit filed by Cecelia Gibbs (“Gibbs”) alleging that she was the victim of sexual harassment and religious discrimination while in P&C Grocers, Inc.’s employ. See Cecelia Gibbs v. P&C Grocers, Inc. et al, 1:05-cv-00912-MHT-SRW (M.D. Ala.)(the “Gibbs suit”). The conduct for which Gibbs seeks to hold Defendants liable, however, is intentional and cannot constitute an

“occurrence” under the governing insurance policy. See Doc. # 17, Exhibit 3. Further, numerous coverage exclusions preclude any determination that coverage should attach. Regis, therefore, owes no coverage. See id.

2. Regis filed its Motion for Summary Judgment on August 7, 2006. See Doc. # 13. Defendants filed their Response on August 29, 2006. See Doc. # 17. Regis filed its Reply on September 8, 2006. See Doc. # 19.

3. Defendants have offered no argument or evidence that the claims pursued in the Gibbs suit fall within the coverage. See Doc. # 17. Rather, Defendants merely argue that the Court should delay ruling on the coverage issues. See id.

4. As previously disclosed to the Court, Regis is currently providing Defendants with a defense under a reservation of rights in the Gibbs suit. See Doc. 19, Exhibit 1-A. Defendants, therefore, have been aware from the start of that litigation that the defense Regis is providing may end and that Regis may owe no indemnity.

5. Because the Gibbs suit has been set for trial on January 8, 2007, and because Defendants’ Motion to Continue that trial setting has been denied, Regis is now faced with having to incur the heavy cost of Defendants’ trial preparation and trial.

6. Such a situation is inequitable because (a) coverage is clearly not owed or is otherwise excluded and (b) **Defendants do not dispute that fact.** See Doc. # 17.

7. Regis would also be extremely prejudiced by a delay in ruling on the coverage issues presented in this action. For example, Defendants fail to argue that Regis owes a duty to defend. See id. The lack of a definitive ruling on this issue (a) equates to a *de facto* finding that such a duty is owed and (b) will only result in Regis incurring costs that it does not owe as a matter of fact and law.

WHEREFORE, PREMISES CONSIDERED, Regis respectfully requests that the Court enter an Order granting summary judgment in Regis' favor on all of its claims.

s/ Brennan C. Ohme
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CERTIFICATE OF SERVICE

I certify that on NOVEMBER 13, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing and/or that a copy of the foregoing has been served by United States Mail, properly addressed and postage pre-paid, to the following:

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